

DOCUMENT RESUME

ED 342 305

HE 025 276

AUTHOR Schenet, Margot A.
TITLE Reforming the Triad: Institutional Eligibility under Title IV of The Higher Education Act. CRS Report for Congress.
INSTITUTION Library of Congress, Washington, D.C. Congressional Research Service.
REPORT NO CRS-92-54-EPW
PUB DATE 6 Jan 92
NOTE 17p.
PUB TYPE Information Analyses (070)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Accountability; *Accreditation (Institutions); Educational Change; *Eligibility; *Federal Legislation; *Federal Programs; Federal State Relationship; Finance Reform; Government Role; *Government School Relationship; Higher Education; Standards; Student Financial Aid; *Student Loan Programs
IDENTIFIERS Guaranteed Student Loan Program; *Higher Education Act Title IV

ABSTRACT

As part of the reauthorization of the Higher Education Act of 1965 the Congress has examined concerns over the integrity of the student aid program and has consequently looked at reforming the current structure used to approve schools for program participation. The current structure has a "triad" format whereby schools that wish to participate must: (1) be accredited by an agency recognized for that purpose by the Secretary of Education; (2) be licensed or otherwise legally authorized to provide postsecondary education in the state in which it is located; and (3) be deemed eligible and certified to participate in federal student aid programs by the Department of Education. Reauthorization bills have proposed revising the definitions of eligible institutions and reforming the process by which institutions become eligible to participate in federal programs. However, the bills have differed on the kinds of changes they would require in standards imposed on schools and on which "leg" of the triad would be relied on for tougher scrutiny of institutions. A contrasting proposal, the Nunn/Gordon bill, focuses specifically on fraud and abuse in the Guaranteed Student Loan program by schools in the proprietary sector. Sixteen notes are included. (JB)

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CRS Report for Congress

Reforming the Triad: Institutional Eligibility Under Title IV of The Higher Education Act

ED342305

Margot A. Schenet
Specialist in Social Legislation
Education and Public Welfare Division

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January 6, 1992



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REFORMING THE TRIAD: INSTITUTIONAL ELIGIBILITY UNDER TITLE IV OF THE HIGHER EDUCATION ACT

SUMMARY

The Higher Education Act of 1965 (HEA), authorizing the major Federal programs supporting postsecondary education, will expire in the 102d Congress. Of primary concern is title IV of the Act, which currently provides about \$18 billion in student aid to help financially needy students attain postsecondary education in colleges, universities, and trade and technical schools. Recently, concerns have grown over student aid program integrity, particularly fraudulent or abusive actions by proprietary (private, for profit) career schools. The Office of Inspector General in the U.S. Department of Education (ED) identified title IV student aid programs as vulnerable to fraud and abuse and devoted substantial resources to audits and investigations of program participants and their oversight by ED. The Senate Permanent Subcommittee on Investigations held a series of hearings in the 101st Congress on student aid program abuses, and issued a report in May 1991 finding fraud and abuse throughout the Guaranteed Student Loan (GSL) program.

Attention during hearings of the HEA has focused on reform of the current "triad" structure used to approve schools for program participation. In order for students attending a school to receive title IV assistance, the school must: 1) be accredited by an agency recognized for that purpose by the Secretary of Education, 2) be licensed or otherwise legally authorized to provide postsecondary education in the State in which it is located, and 3) be deemed eligible and certified to participate in Federal student aid programs by ED. Questions included the following: Would the triad be a more effective approval mechanism if greater reliance were placed on strengthened State and/or accrediting agency oversight? Are stricter standards for ED certification also needed? As an alternative, should the laws and regulations be applied differently to certain schools to deal with integrity issues?

HEA reauthorization bills ordered reported by House and Senate committees (S. 1150 and H.R. 3553) revise the definitions of eligible institutions and include a number of provisions to reform the process by which institutions become eligible to participate in title IV student aid programs. Instead of singling out particular types of postsecondary institutions, both bills reform the institutional eligibility rules for all postsecondary institutions. However, they differ significantly in the kinds of changes in standards that are imposed on schools, as well as which "leg" of the current triad to rely on for tougher scrutiny of institutions.

In contrast, a proposal introduced by Senator Sam Nunn (S. 1503) and Representative Bart Gordon (H.R. 3239), based on recommendations of the Senate Permanent Investigations Subcommittee, focuses specifically on fraud and abuse in the GSL program by schools in the proprietary sector of postsecondary education. The Nunn/Gordon bill amends institutional eligibility and the regulatory structure only for proprietary trade schools (as defined in the bill), and responds to other committee recommendations concerning GSL participants and ED management.

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REFORMING THE TRIAD: INSTITUTIONAL ELIGIBILITY UNDER TITLE IV OF THE HIGHER EDUCATION ACT

PROGRAM INTEGRITY AND THE CURRENT REGULATORY STRUCTURE

The Higher Education Act of 1965 (HEA), authorizing the major Federal programs supporting postsecondary education, will expire in the 102d Congress. Of primary concern is title IV of the Act, which currently provides about \$18 billion in student aid to help financially needy students attain postsecondary education in colleges, universities, and trade and technical schools. Recently, concerns have grown over student aid program integrity, particularly fraudulent or abusive actions by schools or other program participants. In the late 1980s, the Office of Inspector General (OIG) in the U.S. Department of Education (ED) identified title IV student aid programs as vulnerable to fraud and abuse and devoted substantial resources to audits and investigations of program participants and their oversight by ED. The Senate Permanent Subcommittee on Investigations, chaired by Senator Sam Nunn, held a series of hearings in the 101st Congress on student aid program abuses, and issued a report in May 1991 finding that the Guaranteed Student Loan program (GSL) was "plagued by fraud and abuse at every level. . . ."¹

The GSL program default rate and default costs are at an all-time high, and some attribute this condition in part to the exploitation of the loan programs by certain program players seeking high profits from the \$11 billion in loans disbursed to students annually. Media attention has been focused on proprietary (private, for-profit) trade schools as a major source of program abuse, because their student default rates are at least 1½ times those of other postsecondary institutions. The charge is that such schools exploit the ready availability of loans and other student aid to lure students into their programs. Subsequently, the students are not equipped to support loan repayments and suffer the consequences of default. Schools claim they serve disproportionately high numbers of students at-risk of default.

Concerns raised by these recent reports of fraud and abuse have focused attention on how to improve the regulatory structure in order to assure probity among program participants, in particular the current "triad" structure used to approve schools for program participation. In order for students attending a school to receive Federal assistance, the school must:

- Be accredited by an agency recognized for that purpose by the Secretary of Education

¹U.S. Congress. Senate. Permanent Subcommittee on Investigations. *Abuses in Federal Student Aid Programs*. Senate Report No. 102-58, 102d Cong., 1st Sess. Washington, GPO, 1991.

- Be licensed or otherwise legally authorized to provide postsecondary education in the State in which it is located, and
- Be deemed eligible and certified to participate in Federal student aid programs by ED.²

Of the three components of the "triad"--accreditation, State licensing, and eligibility and certification--two, developed independently of any Federal program, need to serve purposes related to quality assurance and consumer protection, **but not necessarily from the Federal perspective.** To avoid activating fears about Federal interference in educational decision making, the Federal Government, generally, and ED, specifically, have relied on accrediting agencies and State licensing to determine standards of program quality.³

Thus, a three-pronged system of regulation developed with each component operating independently and having different purposes and histories. Accreditation agencies, which are private organizations set up to review the qualifications of member institutions, are the locus for essentially self-initiated quality guidelines and self-improvement efforts. State agencies, such as school licensing bureaus typically exercise minimal educational quality control and attempt to protect the student consumer. The Federal Government, through ED, is the third arm of the triad, focusing on protecting the administrative and fiscal integrity of its funding programs.

Questions about reform of the triad raised during hearings on reauthorization of the HEA have included the following: Would the triad be a more effective approval mechanism if the greater reliance were placed on strengthened State and/or accrediting agency oversight? Are stricter standards for ED certification also needed? As an alternative to changing the general structure for institutional eligibility, should the laws and regulations be applied differently to certain schools (defined by institutional sector, or some indicator such as default rates) to deal with integrity issues?

HEA reauthorization bills ordered reported by House and Senate committees (H.R. 3553 and S. 1150) revise the definitions of eligible institutions and include a number of provisions to reform the process by which institutions become eligible to participate in title IV student aid programs. Instead of singling out any particular sector of postsecondary schools for special screening and oversight, both bills elect to reform the institutional eligibility rules for all postsecondary institutions. However, they differ significantly in the kinds of

²See 20 U.S.C 1068(b), 1082, 1085, 1088, 1094 and 1141.

³The legislation establishing Ed specifically prohibits it from exercising "any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, over any accrediting agency or association. . . ." Department of Education Organization Act, P.L. 96-88, section 103(b).

changes in standards that are imposed on schools, as well as which "leg" of the current triad to rely on for tougher scrutiny of institutions.

In contrast, a proposal introduced by Senator Sam Nunn (S. 1503) and Representative Bart Gordon (H.R. 3239), based on the recommendations in the report of the Senate Permanent Investigations Subcommittee, focuses specifically on fraud and abuse in the GSL program by schools in the proprietary sector of postsecondary education. The Nunn/Gordon bill amends institutional eligibility and the regulatory structure only for proprietary trade schools (as defined in the bill), as well as implementing other report recommendations concerning GSL participants and ED management.

In the following pages, the key changes being proposed in the regulatory structure for title IV (institutional definitions, accreditation, State licensing, and ED eligibility and certification) in the HEA reauthorization bills and the Nunn bill are described and compared. Additional changes that these bills propose in the GSL program and other specific default prevention measures are not included here.⁴

DEFINITIONS OF ELIGIBLE INSTITUTIONS

Both H.R. 3553 and S. 1550 revise the definitions of institutions in title IV to exclude from eligibility schools that offer 50 percent or more of their courses through correspondence and to restrict the eligibility of programs of less than 600 clock hours (6 months). Currently, these predominantly vocational programs of 300 to 600 clock hours are eligible only for GSL program participation and have been the focus of much of the attention in charges of fraud and abuse and high default rates. Under the House bill, programs of more than 3 months, but less than 6 months would continue to be eligible for GSLs⁶ **only if** the school owner or prospective employer cosigns the loan **and** the loan is for no more than half the tuition and fees. The Senate bill provides eligibility for all title IV programs **only** for those 300 hour programs that require an associate or bachelor's degree for admission, otherwise programs must be at least 600 hours long.

S. 1503/H.R. 3239 creates a separate definition of "proprietary trade school" that includes profit or non-profit occupational training schools and applies new standards of eligibility, including specific accreditation and State licensing requirements, exclusively to this category of schools and not to traditional

⁴For a description of the major differences in the House and Senate reauthorization proposals, including changes in the GSL program, see U.S. Library of Congress. Congressional Research Service. *Higher Education: Reauthorization of the Higher Education Act*. Issue Brief No. IB90028, coordinated by Margot A. Schenet, Nov. 12, 1991 (continually updated). Washington, 1991.

⁶Part B loans, but not presumable the new direct loan program authorized by part D of title IV.

institutions of higher education or public vocational schools.⁶ Proprietary trade schools that offer home study or correspondence programs are not eligible. Unlike the reauthorization measures, the Nunn/Gordon bill does not set a minimum on the number of hours of training so that proprietary trade schools meeting the new eligibility requirements could provide title IV aid (not just GSLs) for programs of 300 hours.

There are two basic arguments for excluding 300 to 600 hour programs from eligibility. First, the OIG and others have charged that many schools offering these short-term programs, such as manicurist training, have stretched program length to 300 hours solely for the purpose of qualifying their students for Federal loans. Second, the skills taught in these short programs may be obtained through on-the-job training or at little cost in high school or community college programs without requiring students to accumulate debt exceeding their earning potential. On the other hand, without additional measures to protect against fraud and abuse, some argue that raising the minimum hours requirement will only lead schools to stretch 300 hour programs into 600 hours to continue to qualify students for Federal aid. Both the House and Senate reauthorization bills attempt to guard against further course stretching. H.R. 3553 requires State approval agencies to review the length of programs in relation to their training objectives, while S. 1150 gives ED the responsibility of developing criteria to guard against such abuse.

ACCREDITATION

According to the Council on Postsecondary Accreditation, or COPA, accreditation is "a system for recognizing educational institutions and professional programs affiliated with those institutions for a level of performance, integrity and quality which entitles them to the confidence of the educational community and the public they serve." The two main functions of accreditation are the development of standards and the protection of institutional autonomy.⁷ Both have important implications for the use of accrediting agencies as part of the regulatory structure for schools participating in title IV, since accreditation by an agency recognized by the Secretary of Education is the first leg of the triad for institutional eligibility. There are six regional accrediting associations or commissions that accredit traditional colleges

⁶Public community colleges' occupational training programs would not be covered by these provisions, however occupational programs provided by private colleges would appear to be included in the definition of proprietary trade schools.

⁷Council on Postsecondary Accreditation. *The Balance Wheel for Accreditation, Annual Directory*. Washington, 1987. See also Young, Kenneth E., ed. *Understanding Accreditation: Contemporary Perspectives on Issues and Practices in Evaluating Educational Quality*. San Francisco, Jossey-Bass Inc., 1983 (hereafter cited as Young, *Understanding Accreditation*).

and universities, as well as seven agencies that accredit proprietary trade schools nationally, that are currently recognized by the Secretary of Education.⁸

Accrediting organizations generally avoid specific standards and quantitative checklists in developing criteria of quality and fostering excellence, and instead rely on qualitative criteria and subjective judgments of institutional excellence. Although the standards vary, the actual process of accreditation is very uniform, regardless of which accrediting agency is involved. In keeping with the primary goals of peer review and self-improvement, the key element in accreditation is self-evaluation by the institution. The standard components of the accreditation process include a self-study, an on-site evaluation by a team of peers, and a final decision to grant or deny accreditation by the full accrediting commission.

There are a number of limits to the accreditation process as a means to insure consistently high standards at schools, some of which are fundamentally linked to its nature. It is important to remember that accrediting is undertaken **in the interests of, and is financed by** accredited schools. Public service and consumer protection are secondary interests. Accreditation is not a process by which institutions are measured against clear objective standards of quality. Although the public often assumes that accreditation implies some warranty or "good housekeeping seal of approval" that protects the educational consumer or vouches for the financial and educational integrity of an institution, accrediting agencies make no such claims. Accreditation cycles are too long to be able to vouch for the current status of schools, and accrediting bodies generally do not have the resources to closely monitor accredited schools. Since the outlook of the accreditors is collegial and voluntary, they do not see policing or enforcement of standards as part of their mission.⁹

Federal recognition of accrediting bodies was first established under the Veterans Readjustment Assistance Act of 1952, which authorized the Commissioner of Education to "publish a list of nationally recognized accrediting agencies and associations which he determines to be reliable authorities as to the quality of training offered by an educational institution. . . ." ¹⁰

⁸The list of recognized accrediting bodies also includes a large number of specialized agencies that accredit specific programs. For a more detailed analysis of the current regulatory structure particularly as it pertains to proprietary schools, see U.S. Library of Congress. Congressional Research Service. *Proprietary Schools. The Regulatory Structure*. CRS Report for Congress No. 90424 EPW, by Margot A. Schenet. Washington, 1990.

⁹See Young, *Understanding Accreditation*.

¹⁰For a good description of the history of the Federal role in recognizing accrediting agencies, see Kaplan, William A., and J. Philip Hunter. *The Legal Status of the Educational Accrediting Agency: Problems in Judicial Supervision and Governmental Regulation*. *Cornell Law Quarterly*, fall 1966. p. 104-131.

The impetus for this authority and similar authorization in other legislation such as title IV was the need for a reliable measure of educational quality that avoided any appearance of Federal interference in educational decisions by schools. The criteria for ED recognition, established by regulation and most recently revised in 1988, are more procedural than substantive. To be recognized by ED, an agency must:

- Have sufficient experience in the programs for which it seeks to be the recognized accrediting body;
- Be national or regional in scope;
- Have sufficient resources to carry out its functions;
- Be nationally recognized as the appropriate accrediting body;
- Have written documents describing its standards and procedures; and
- Adhere to an accreditation process imposed on institutions applying for accreditation.¹¹

The higher education establishment has in the past opposed most attempts to revise the criteria for recognition, arguing that any expansion in or greater specificity in such criteria could be a step towards government interference with curricula and academic freedom. On the other hand, a Carter Administration proposal to drop the accreditation recognition process also aroused opposition from the higher education community that feared the alternative would be more stringent eligibility requirements imposed directly on individual schools by the Federal Government.

With respect to accreditation, the current legislative initiatives take two quite different approaches. The House reauthorization measure, H.R. 3553, essentially removes accreditation as a leg of the triad by deleting it as a requirement for institutional eligibility. The Senate reauthorization bill, S. 1150, as well as the Nunn/Gordon bill, attempt to strengthen accreditation standards indirectly through the recognition process.

S. 1150 adds a number of standards for recognition by ED to the statute. These standards are intended to strengthen the accreditation process for all schools and to insure independence of national accrediting agencies from

¹¹The process must include: institutional self-analysis, on-site review, and reevaluation at reasonable intervals. Information on educational effectiveness, the adequacy and accuracy of public disclosures, and the decisions of other recognized accrediting agencies must be included as part of its criteria for accrediting schools.

trade associations of proprietary schools. Among the new emphases, the bill clarifies that, to be recognized, all accrediting agencies have to review schools for the quality of instruction and courses offered as well as the sufficiency and

quality of facilities, resources, and faculty.¹² To insure independence from trade associations, agencies would be required to have at least 25 percent of commission members be representatives of the public, and to have a separate budget and dues. Other procedural requirements added to the ED recognition criteria are:

- Training for accreditation team members;
- On-site visits for new branch campuses or schools that change ownership;
- At least one unannounced site visit for schools offering vocational programs, and
- Information sharing with other legs of the triad.

The Nunn/Gordon bill (S. 1503/H.R. 3239) contains similar provisions but these are requirements **only for the recognition by ED of proprietary trade school accrediting bodies**. In addition, this proposal requires the Secretary of ED to develop "uniform performance-based consumer protection in areas such as withdrawal, completion, placement, and default rates to be applied by proprietary trade school accrediting agencies.

Arguments in favor of eliminating accreditation as a criteria for institutional eligibility generally focus on the difficulty of using a private peer organization for accomplishing what are essentially Federal oversight and monitoring objectives. Because the higher education community has objected to past efforts to be specific in the criteria for ED recognition as an interference with academic freedom, Federal objectives may be more directly accomplished through the ED certification process. This would presumably leave accreditation in existence as a private operation, since it was established long before the Federal Government seized upon it as an indirect way to guarantee quality education.

What this line of reasoning leaves unresolved is how to assure the quality of the educational experience received by Federal aid recipients without engendering charges of "Federal interference" in academia. As contemplated by H.R. 3553, only existing schools that have problems would be subjected to State scrutiny of the quality of their instruction (all new schools would be reviewed), and ED would not be required to use any quality of education or performance outcome measures in certifying schools for title IV participation. Thus, some

¹²Accrediting agencies generally have such standards already, but under current regulations they are not a part of the criteria for recognition.

existing schools with poor quality could continue to be eligible if the criteria used to select schools for State review are not comprehensive enough (see discussion below of State approval process being proposed in H.R. 3553). On the other hand, many private nonprofit colleges and universities are concerned that the proposed criteria for State review open the door to State oversight of their curricula since the bill accepts such review in principle. These schools would prefer to continue to rely on the private accreditation process for assessment of educational quality and performance.¹³

STATE LICENSING AND APPROVAL

There is no consistent State role in regulating postsecondary schools since States developed rules with a variety of different purposes and perspectives. Generally, the rules and the State higher education agency (or the State commission/governing board) that sets standards for public and private nonprofit higher education institutions are separate from State agencies and regulations for licensing proprietary schools. While all States have some approval or licensing procedure that postsecondary schools of all kinds must comply with in order to operate within the State, these procedures differ greatly both within and across State lines. Because of the concerns about fraud and abuse in the proprietary sector, attention has focused on the problems with regulation of proprietary schools at the State level. The lack of uniformity in State statutes and regulations has limited the reliance that could be placed on States for insuring Federal objectives in the use of student aid funds. States have varied greatly in the substantive areas covered, in the strictness of the standards imposed, and in the extent to which the applicable statutes are actually implemented and enforced.

Recently, however, five of the six States with the largest proportions of proprietary school students or schools nationwide, Texas, California, Ohio, Illinois, and New York have amended their proprietary school laws. A number of other States also have revised recently or are in the process of revising and strengthening their statutes and regulations governing the proprietary sector. These State reform efforts have focused on raising fees to strengthen monitoring

¹³Ironically, in a context unrelated to reauthorization of HEA, the Secretary of Education, Lamar Alexander, has recently suggested that the requirement for cultural diversity standards, imposed as a condition for accreditation by the Middle States Association of Colleges and Schools (MSACS), is coercive. He questioned whether perhaps accreditation could be bypassed as a criterion for institutional eligibility for title IV funds. The issue arose in 1991 during the renewal of the MSACS recognition as an accrediting body by ED. Complaints were made to ED about the Middle States' diversity standards. For further information on this issue, see Jaschik, Scott and Robert R. Schmidt, Jr. *College Accreditors Spur Use of Quotas, Federal Officials Say. Chronicle of Higher Education*, Dec. 4, 1991. p. A37. On Dec. 12, 1991, *The Washington Post* reported that Middle States and ED may have agreed to a compromise on the issue of the association's diversity standards.

and enforcement staff, establishing some tuition-reimbursement refund plan, implementing new requirements for schools to submit financial information, and setting standards for placement and program completion rates. A recent report by the State Higher Education Executive Officers Association (SHEEO) recommended that all States work to establish tougher standards for licensing proprietary schools and that the Federal Government provide financial assistance for this effort.¹⁴

Both House and Senate reauthorization bills attempt to set up an essentially new State approval process, coordinated by a single State agency, that would approve all postsecondary institutions within a State for purposes of title IV eligibility. H.R. 3553 requires "State postsecondary approving agencies" to sign agreements with the Secretary of Education to perform a two tier approval process, for which they would be reimbursed by ED. The bill authorizes such sums as may be necessary up to 1 percent of total title IV financial aid appropriations. In order to avoid problems with claims of State interference in the affairs of traditionally independent public or private colleges and universities, the House bill makes State approval automatic for institutions that do not exhibit any of the following criteria:

- A default rate of 25 percent or higher;
- A default rate of 20 percent or higher **and either** more than two-thirds of the students receive title IV aid **or** more than two-thirds of operating expenses are paid from Federal student aid funds;
- The school was subject to a limitation, suspension or termination action by ED within the last 5 years;
- The school was subject to an audit exception of more than 2 percent of its annual title IV aid for the two most recent audits;
- The school was cited for a late audit;
- The school's GSL or Pell grant funds fluctuated by more than 25 percent;
- A change in ownership;
- Less than 5 years participation in title IV programs;
- A large number of student complaints; or

¹⁴See Cage, Mary Crystal. Tougher Regulations for For-Profit Trade Schools Gain Support in a Growing Number of States. *The Chronicle of Higher Education*, Apr. 25, 1990. p. A22, 24, 25; and Merisotis, Jamie P. *The Methods and Effectiveness of State Licensing of Proprietary Institutions; A Report of the State Higher Education Executive Officers*. Denver, Sept. 1991.

- Other criteria established by the Secretary.

Institutions exhibiting at least one of these criteria would be reviewed by the State agency in accordance with State standards in specified areas that include the quality of the instruction and personnel, student consumer protection, financial and administrative capacity, and the relation of student charges to the expected employment outcomes.

Like the House bill, the Senate reauthorization bill creates a new State agency approval process. S. 1150 authorizes \$10 million for discretionary grants from ED to States for this purpose. Under the Senate bill, all schools would be reviewed according to an approval process that includes State developed standards in the areas of financial and administrative capacity, facilities, student consumer protection, refund policies (that at a minimum must provide for prorata refunds for withdrawals in the first half of the program), and separate review of new branches and schools that change ownership. Institutions with certain characteristics that indicate problems or that are new institutions (similar to the criteria in H.R. 3553 listed above) would be required to comply with a set of very specific financial and administrative requirements defined in the statute in order to receive State approval.¹⁶

In contrast, the Nunn/Gordon bill requires approval by "the State Higher Education Agency" of all proprietary trade schools while no Federal funds are provided. States are required to conduct on-site inspections and to use criteria for approval that include, at a minimum:

- The quality and content of instruction, equipment and personnel are adequate to meet the school's stated objectives;
- Adequate school standards for attendance, satisfactory progress, and student performance;
- Compliance with health and safety rules;
- Availability of school publications describing performance of students with respect to completion, placement, and defaults; and
- A fair and equitable refund policy.¹⁶

ELIGIBILITY AND CERTIFICATION

As the final leg of the triad, postsecondary institutions must go through the eligibility and certification processes. To establish eligibility, ED's Division of

¹⁵For example, one requirement is that the institution's asset to liability ratio be at least 1:1 excluding unearned tuition or undisbursed Federal funds.

¹⁶The bill does not define what is a fair and equitable refund policy, nor acceptable performance or quality standards, presumably leaving this to States.

Eligibility and Certification reviews documents provided by the school to determine whether a school has met the State authorization and the accreditation requirements. Proprietary and vocational schools must also have been in operation for 2 years, and their programs must meet the minimum course length requirements. Eligibility for all institutions must be renewed every 4 years.

Eligible institutions must then be certified as meeting certain regulatory requirements regarding financial responsibility and administrative capability. The financial responsibility standards are supposed to indicate that an institution can pay its bills, is financially sound, and that the owners and/or employees have not previously been convicted of defrauding the Federal Government. The administrative capability requirements are also basic and concern the adequacy of personnel resources to administer title IV programs and the maintenance of student records. After reviewing the application and documents submitted, Department staff determine whether a school meets these standards and certify it for participation in title IV programs. Schools for which there is concern about their financial capability may be placed in a special reporting category. Finally, schools must sign program participation agreements with the Department for each of the title IV programs. These agreements generally refer back to the general standards for participation discussed above as well as any administrative requirements specific to a particular program.

Both House and Senate reauthorization bills amend and strengthen the statutory requirements for ED certification. In contrast, the Nunn/Gordon bill does little to increase ED responsibilities, instead relying on other legs of the triad for better protection against fraud and abuse, particularly for proprietary schools.

H.R. 3553 significantly strengthens the Federal requirements for certification. Among the key provisions are:

- A Federal prorata refund requirement for all institutions (for student withdrawals up to 75 percent of the total course period);
- Annual independent financial audits;
- Financial guarantees sufficient to cover potential liabilities for Federal funds; all currently certified institutions to be recertified within 5 years with priority for high default rate schools;
- A 5 year limit on certification with conditional certification for new or troubled institutions;
- All branches or schools that change ownership to be separately certified; and
- On-site review by ED prior to initial certification. (ED would be allowed to charge schools fees for the site visits.)

The Senate reauthorization bill also has new requirements for ED certification and program reviews: a maximum 5 year certification, with on-site reviews and provisional certification for new institutions and those that change ownership, annual audits, limits on the increases in loan volume for new participants, and sufficient cash reserves to cover all student aid refund liabilities. Unlike the House bill, the Senate bill also attempts to address the question of program quality at the Federal level, and requires the Secretary to develop performance standards related to program outcomes, such as completion and placement rates, for use in the certification process.

The Nunn/Gordon bill creates a new position of Assistant Secretary for Student Financial Assistance and an office of Student Financial Assistance Oversight and Enforcement, but does not establish any new criteria pertaining to ED certification or review of institutions participating in title IV programs.

CONCLUSION

The areas of significant difference in the bills discussed above (besides the overall approach of applying new regulatory standards and processes to all postsecondary institutions or only to the proprietary school sector) include whether to retain accreditation as a leg of the triad (only H.R. 3553 drops accreditation), whether to attempt to strengthen standards on educational quality, whether to develop performance standards to measure quality through student outcomes, and if so where to lodge responsibility for such efforts. Each of the bills takes a different approach. H.R. 3553 requires State approving agencies to apply certain standards of quality, but not performance outcomes, to schools that meet certain criteria indicating problems or that were recently established. S. 1150 clarifies that accrediting agencies are responsible for reviewing quality, but places responsibility for developing performance standards within ED as part of the certification process. The Nunn/Gordon bill also places responsibility for review of educational quality with the accreditation process, and requires the Secretary of Education to develop performance standards for use by the accrediting agencies, not by ED.

Another area of difference concerns strengthening the requirements for financial liability of schools and refund policies. H.R. 3553 establishes new requirements in these areas as part of Federal certification by ED. Program participation would require schools to have a letter of credit or other irrevocable bond sufficient to cover all potential liabilities under title IV. In order to be certified, all schools would also be required to have refund policies that at a minimum provide prorata (rounded down to the nearest 10 percent) refunds for students withdrawing up to 75 percent of the course period. S. 1150 requires ED to ascertain as part of the certification process whether a school has sufficient cash reserves to assure repayment of required refunds, and requires State agencies to insure that, at a minimum, schools provide prorata refunds for first time students up to the first half of the course period. The Nunn/Gordon bill (S. 1503/H.R. 3239) does not go beyond current requirements in this area.